

The imposition of the various local Retailers' Occupation Taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. (This is a PLR.)

August 13, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of June 25, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, COMPANY, we respectfully request that the Illinois Department of Revenue (the 'Department') issue a private letter ruling pursuant to 2 Ill. Adm. Code 1200.110 with respect to the following factual situation.

General Information

Enclosed please find an original Form IL-2848 Power of Attorney, authorizing FIRM to represent COMPANY before the Department.

This Private Letter Ruling ('PLR') is not requested with regard to hypothetical or alternative proposed transactions. The PLR is requested to determine the Retailer's Occupation Tax consequences of the actual business practice of the Company.

The Company is not currently engaged in litigation with the Department with regard to this or any other tax matter. The Company is not currently under audit by the Department for Retailers Occupation Tax or Use Tax. The Company is currently under audit by the Department for income taxes for tax years 1996, 1997, and 1998.

To the best knowledge of the Company's personnel, and to the best of our knowledge, the Department has not previously ruled regarding this matter for the Company. Neither the Company, nor we on their behalf, have, at any time prior, submitted the same or similar issue to the Department.

The Company requests that certain information be deleted from the PLR prior to dissemination to others. The Company requests that its name, the name of its Parent, address, the location of its facility, and the name of its representative be deleted.

We have enclosed copies of relevant documentation for your review.

Statement of Material Facts

The Company is a wholly owned subsidiary of AAA and was formed to serve as a central procurement source of jet fuel for AAA and other Customers. The Company may consider converting in the future from a STATE Corporation to a STATE Limited Liability Company pursuant to Chapter 1, Section 266 of the STATE Code. The Company is engaged in the business of selling jet fuel ('fuel') to AAA and to other airlines and other fuel vendors (collectively referred to as the 'Customers'). The Company's principal sales office for Illinois sales ('Office A') is located in CITY, Illinois, a Home Rule municipality ('Municipality A'). Office A is staffed by a sales representative ('the representative') of the Company. The Company also maintains offices at its Parent's corporate headquarters located in CITY2 as well as other corporate offices located in CITY3 ('Office B') from where the Company directs its fuel purchasing and accounting. Additionally, the Company has entered into a Terminalling Agreement with a third party storage facility located in CITY4, Illinois.

The Company has entered into various contracts with a number of suppliers to purchase jet fuel to be resold to AAA and its other Customers for use in Illinois. These contracts are negotiated by the Company's purchasing personnel located in Office B. All fuel purchases are routed to the various destinations by a 'Scheduler' also located in Office B.

The company purchases jet fuel destined for the Illinois market through four different methods. The first method is where the Company makes term contract and 'spot purchases' of jet fuel in the PLACE directly from refiners or wholesalers. When the jet fuel is loaded into the pipeline at the PLACE the jet fuel belongs to the Company. While in the pipeline, the Scheduler in Office B directs the pipeline to send specific amounts of jet fuel to the storage facility in CITY3. If the CITY3 storage facility is at capacity, the Scheduler routes additional Illinois destined jet fuel to a storage facility located in CITY/STATE. The jet fuel is then transferred to CITY3 as needed and as capacity allows.

The second method of purchasing is where the Company purchases jet fuel under term contracts directly into the CITY3 storage facility. Approximately seventy percent of jet fuel purchased through this method is ultimately sold to Customers for use in international flights.

The third method of purchasing is where the Company buys directly from a fuel vendor located in CITY5, Illinois at LOCATION. This jet fuel is transferred to one of the Company's storage facilities located at LOCATION.

The fourth method of purchasing is through reverse auction. Jet fuel purchased through reverse auction is delivered into-wing at eight locations, as well as through bulk delivery terminals in the U.S., the PLACE and CITY/STATE.

The Company has entered into Master Sale Agreements ('the Agreement'), in the form of requirements contracts, with AAA and the other Customers. The Agreement sets forth the terms and conditions for the purchase of jet fuel by AAA and the other

Customers from the Company. Specifically, the Agreement estimates the amount of jet fuel the Company will commit to provide to each customer for the upcoming year. Additionally, the Agreement establishes the pricing structure for all jet fuel purchased pursuant to the Agreement. Finally, each Agreement specifies that the Company will become bound to perform under the contract only upon physical receipt of a signed purchase order in Municipality A. Each Agreement is signed by a Company authorized employee in Municipality A and is sent to each airline customer. The signed Agreement represents the Company's complete and unconditional offer to sell specified amounts of jet fuel to the customer airline and, by operation of law (Article 2 of the Uniform Commercial Code, 810 ILCS 5/2-206), becomes a binding contract upon acceptance by the customer airline. The Agreement is signed by an authorized employee of the customer airline and is subsequently sent, either via mail or fax, to the Company's office in Municipality A.

1. Company Sales to AAA

Under the terms of the Agreement, when AAA wishes to purchase jet fuel for flights originating at LOCATION (or any other Illinois airport), it determines an estimate of the amount of jet fuel it will need for a specific period (i.e., monthly) based on the prior month's consumption. Each month, a blank P.O. is sent by the Company to AAA. Each P.O. incorporates the terms and conditions of the Agreement. Specifically, the P.O. requires AAA to specify the quantity of jet fuel it anticipates it will require for the stated period, sign the document and fax the completed and signed P.O. to the Company's office in Municipality A.

The AAA signed P.O. represents AAA's acceptance of the Company's complete and unconditional offer to sell specified amounts of jet fuel to AAA pursuant to the Agreement. Acceptance by AAA is effected only by an authorized officer, employee, or agent of AAA signing the original document and returning it to the Company office in Municipality A. Under the terms of the Agreement, each P.O. becomes binding on the Company only upon its receipt by the Company's authorized representative in Municipality A.

Upon receipt of the signed P.O. by the Company's authorized representative in Municipality A, AAA is bound to purchase and acquires a legal right to the specified jet fuel. The Company's representative at Office A located in Municipality A receives the P.O., logs its receipt and maintains a file of all signed P.O.s. The specific details of AAA's jet fuel request are then communicated by the Company's representative in Office A to the Company's personnel located in Office B for purposes of scheduling jet fuel delivery to AAA. The Scheduler, upon notification by the Company's representative in Office A, directs the fuel storage system operator to sell the quantity of Jet fuel specified on the signed P.O. from the Company's book inventory to AAA's book inventory by making the appropriate journal entries on the books of each company.

2. Company Sales to Other Airline Customers

Under the terms of the Agreement, when a Customer wishes to purchase fuel for flights originating at LOCATION (or any other Illinois airport), it determines an estimate of the amount of fuel it will need for a specific period (i.e., monthly) based on the prior month's consumption. Each month, a blank P.O. is sent by the Company to the Customer. Each P.O. incorporates the terms and conditions of the Agreement. Specifically, the P.O.

requires the Customer to specify the quantity of fuel it anticipates it will require for the stated period, sign the document and fax the completed and signed P.O. to the Company's office in Municipality A.

The Customer signed P.O. represents the Customer's acceptance of the Company's complete and unconditional offer to sell specified amounts of jet fuel to the Customer pursuant to the Agreement. Acceptance by the Customer is effected only by an authorized officer, employee, or agent of the Customer signing the original document and returning it to the Company's office in Municipality A. Under the terms of the Agreement, each P.O. becomes binding on the Company only upon its receipt by the Company's authorized representative in Municipality A.

Upon receipt of the signed P.O. by the Company's authorized representative in Municipality A, the Customer is bound to purchase and acquires a legal right to the specified jet fuel. The Company representative at Office A located in Municipality A receives the P.O., logs its receipt and maintains a file of all signed P.O.s. The specific details of the Customer's jet fuel request is then communicated by the Company representative in Office A to the Company's personnel located in Office B for purposes of scheduling jet fuel delivery to the Customer. Additionally, while Customers purchasing fuel into-wing will not know the exact amount of jet fuel actually purchased until the fuel is loaded into the airplanes, the Customer becomes bound to purchase and acquires the legal right to the actual fuel loaded into the airplanes, provided the amount actually loaded into the airplanes does not materially differ from the amount specified in the P.O. Receipt of the signed P.O. in Office A is the final step necessary to bind the Company to sell to the Customer the amount of jet fuel specified in the P.O.

Issue

Whether the receipt of signed P.O.'s, representing AAA's and the Customer's acceptance of the Company's complete and unconditional offer to sell the specified goods by the Company's authorized representative located at Office A, conclusively establishes Municipality A as the situs of the sale for Illinois Retailers' Occupation Tax ('ROT') purposes such that the state and local tax rate in effect in Municipality A applies to the sale.

Relevant Authorities

The ROT statutes do not specifically address the rules for determining the proper location of the sale. However, substantial guidance can be found in the regulations issued by the Department of Revenue for the local Home Rule Municipal, Home Rule County, Regional Transportation Authority, Metro East Transit District, and Special Purpose County Retailers' Occupation Taxes. In addition, administrative regulations have the force of law in Illinois and are construed under the same rules that govern the construction of statutes. (Northern Illinois Automobile Wreckers & Rebuilders Ass'n v. Dixon (1979), 75 Ill. 2d 53, 18 Ill. 2d, 496, 165 N.E.2d 305, 387 N.E.2d 320 (1979), *cert. denied*, 444 U.S. 844, 62 L. Ed. 2d 57, 100 S. Ct. 87).

Using consistent language, the local ROT regulations state that the Department considers the seller's acceptance of the purchase order or other contracting action in the making of the sales contract the most important single factor in the occupation of selling. Additionally, the regulations provide that if a purchase order *which is an*

acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business or by someone working within a municipality that imposes HRMOT, the seller incurs HMROT liability in that jurisdiction. (86 Ill. Admin. Code Sec. 270.115).

Using identical language, the regulations state:

'Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of sections (f) and (g) of this section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by someone working out of such place of business, the seller incurs Municipal Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives physical possession of the property in Illinois.'

The Regulations further state that:

'Under a long term blanket or master contract which (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Home Rule Municipal Retailer's Occupation Taxes with respect to such orders.'

It appears that there are no previously issued letter rulings with the precise fact pattern as presented here. However, several rulings on this matter involved taxpayers with similar order acceptance procedures. These rulings indicate that the receipt of the customer's acceptance of the seller's complete and unconditional offer to sell at Office A conclusively establishes the situs of the sale in Municipality A and, consequently, Municipality A's HRMROT applies to the Company's sales.

In support of the ruling request, the following PLRs use consistent language stating,' .. if a purchase order which is an acceptance of the seller's *complete and unconditional offer to sell is received by the seller's place of business* within the municipality or by someone working out of such place of business, the seller incurs ROT liability in the respective jurisdiction.'

In PLR ST-00-0020, the Department ruled that the receipt of a signed contract representing a customer's acceptance of the taxpayer's complete and unconditional offer to sell goods established that city as the point in which the sale occurred. In issuing its ruling, the Department stated: 'Please note that receipt of an order is not necessarily acceptance. However, if when the order is received at City B, sellers become bound to perform the contract, without more, then a sale occurs in City B. If the contracts are thus accepted in City B, the state and local tax rate in effect in City B would be applied.'

In PLR 81-1566, the Department ruled that the Regional Transportation Authority ROT applied 'if the purchase order is accepted at the seller's place of business within the metropolitan region or by someone who is working out of such place of business...or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the metropolitan region or by someone working out of such place of business if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.'

PLR 82-0405 also indicates that 'if the purchase order is accepted at the seller's place of business within the municipality and if the purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received within the municipality, the seller incurs Municipal Retailers' Occupation Tax on that liability in that municipality if the sale is at retail and the purchaser receives physical possession of the property in Illinois.'

In PLR 83-0579, in addressing a taxpayer that was charging tax at a rate based on its customer's billing address, rather than its location in COUNTY, the Department ruled that 'assuming that the purchase orders are accepted at the taxpayer's place of business within the CITY5, or by someone working out of such place of business, or if the purchase order which is an acceptance of the taxpayer's complete and unconditional offer to sell is received by the taxpayer within such City, the taxpayer incurs local sales taxes of the CITY5 if the sale is at retail and the purchaser receives the physical possession of the property in Illinois.'

In PLR 90-0857, the Department states that 'in determining whether there will be liability for the Home Rule Municipal Retailers' Occupation Taxes, the point at which the property will be used or consumed and the place at which the purchaser resides are immaterial. So long as your company does not have a place of business in a home rule municipality or salespersons who accept purchase orders for your company in a home rule municipality that imposes a tax, you will incur no local tax liability. It should be noted that the same considerations apply for other locally imposed taxes such as the Regional Transportation Authority Tax and the COUNTY County Water Commission Tax and the like.' Rather the Department determined that 'the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business in the home rule municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by someone working out of such place of business, the seller incurs Home Rule Municipal Retailers' Occupation Tax liability.'

86 II. Adm. 270.115(b)(I) explicitly states:

If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of Sections (f) and (g) of this Section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the municipality or by **someone working out of such place of business**, the seller incurs Municipal Retailers' Occupation Tax liability in that municipality if the sale is at retail and

the purchaser receives the physical possession of the property in Illinois. (emphasis added).

This regulation refers not to an 'employee' working out of the seller's place of business, but rather to 'someone' working out of the retailer's place of business. Based on this regulation, it seems to make no difference under the Department's jurisdiction whether the receipt of the Customer's acceptance of the Company's complete and unconditional offer to sell is performed by the Company's Agent or by the Company's employee.

The Company knows of no authority contrary to the above cited authorities.

Conclusion

The facts further indicate that a sale is not binding on the Company until the signed P.O. is received by its representative in Office A and this is the final action necessary to bind the Company to the sales contract.

Therefore we respectfully request that the Department issue a ruling stating that the receipt of a customer's acceptance of the Company's unconditional offer to sell at Office A conclusively establishes Municipality A as the proper situs of the sale for ROT purposes such that the state and local tax rate (including CITY HRMROT) in effect in Municipality A applies.

Please feel free to contact XXXX if you have any questions regarding this matter.

As you know, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order or other contracting action in the making of the sales contract. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

Based upon the facts set forth in your letter, the receipt of the signed purchase order at the CITY office establishes CITY as the jurisdiction whose local tax rate applies to sales by COMPANY.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

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